



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

May 25, 2018

USDA ANTI HARASSMENT POLICY

The U.S. Department of Agriculture (USDA) is committed to creating and maintaining a talented, diverse, and inclusive workforce. USDA provides employment opportunities, programs, and services to the American public in a manner that demonstrates our commitment to fairness, integrity, and equality. USDA is dedicated to ensuring a workplace free of all forms of harassment. In accordance with requirements established by the U.S. Supreme Court in Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998), and Faragher v. City of Boca Raton, 524 U.S. 775 (1998), this policy applies to USDA employees in their working relationship with Federal employees, non-Federal employees, and the public. It also applies to contractors and individuals employed under other formal agreements with USDA.¹

My expectation for all employees and contractors is simple—"Do right and feed everyone." In order to do right, we must help employees avoid actions or statements considered inappropriate. It is important to define what these terms mean.

- **Discrimination:** Discrimination is defined under federal statutes as unlawful treatment or prejudicial denial of benefits, services, rights, or privileges to a person or persons because of:
 - Race;²
 - Color;³
 - National Origin;⁴
 - Religion;⁵
 - Sex;⁶
 - Disability;⁷
 - Age;⁸ or
 - Genetic Information.⁹

Presidential Executive Orders and USDA's published regulations cover additional bases of discrimination including:

¹ See Exec. Order No. 11246, 30 FR 12319 (1965), as amended by Exec. Order 13672, 79 FR 72985 (2014).

² 42 U.S.C. § 2000e-16 (2017); 7 C.F.R. § 15d.3 (2017); 29 C.F.R. § 1614 (2017).

³ 42 U.S.C. § 2000e-16 (2017); 7 C.F.R. § 15d.3 (2017); 29 C.F.R. § 1614 (2017).

⁴ 42 U.S.C. § 2000e-16 (2017); 7 C.F.R. § 15d.3 (2017); 29 C.F.R. § 1614 (2017).

⁵ 42 U.S.C. § 2000e-16 (2017); 7 C.F.R. § 15d.3 (2017); 7 C.F.R. § 16; 29 C.F.R. § 1614 (2017).

⁶ 42 U.S.C. § 2000e-16 (2017); 7 C.F.R. § 15d.3 (2017); 29 C.F.R. § 1614 (2017).

⁷ 29 U.S.C. § 794 (2017); 7 C.F.R. §§ 15b, 15d.3, and 15e (2017); 29 C.F.R. § 1614 (2017).

⁸ 29 U.S.C. § 633a (2017); 7 C.F.R. 15d.3 (2017); 29 C.F.R. § 1614 (2017).

⁹ 42 U.S.C. § 2000ff (2017); 29 C.F.R. § 1614 (2017).

- Sexual Orientation;¹⁰
 - Marital Status;¹¹
 - Familial and/or Parental Status;¹²
 - Income Derived from a Public Assistance Program;¹³
 - Political Beliefs;¹⁴ or
 - Gender Identity.¹⁵
- **Retaliation:** Taking an action that might deter a reasonable person from participating in activity protected by antidiscrimination and/or whistleblower laws. Protected activity includes: complaining about discriminatory or harassing behavior; disclosing or reporting violations of law, rule, or procedure or disclosing or reporting fraud, waste, and abuse; and assisting with investigations into allegations of discrimination. It includes being fired, demoted, harassed, or otherwise retaliated against because of either having filed a charge of discrimination, complained about discrimination, or participated in an employment discrimination proceeding (such as an investigation or lawsuit). Retaliatory actions are not limited to formal personnel actions such as termination, demotion, non-promotion, or non-selection. Retaliatory actions are broadly defined to include harassing behavior, significant changes to job duties or working conditions, and even threats to take personnel actions.
 - **Harassment:** Harassment is unwelcome conduct that is based on race, color, national origin, religion, sex, disability, age, genetic information, sexual orientation, marital status, familial and/or parental status, income derived from a public assistance program, political beliefs, or gender identity. Harassment becomes unlawful when enduring the offensive conduct becomes a condition of continued employment or the conduct is sufficiently severe or pervasive to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. “Sexual” harassment is a particular type of harassment that includes unwelcome conduct such as sexual advances; requests for sexual favors or dates; remarks about an individual’s appearance; discussions, remarks, or jokes of a sexual nature; and other verbal or physical harassment of a sexual nature. It is a type of discriminatory behavior where an individual is subjected to unwelcome verbal or physical conduct that is so objectively offensive as to alter the victim’s terms and conditions of employment. The harasser can be the victim’s supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Harassing conduct may include, but is not limited to, the following actions:

1. Sexual harassment, which is a particularly egregious form of prohibited harassment and a form of sex discrimination prohibited by law and regulation.

¹⁰ Exec. Order No. 13087, 63 FR 30097 (1998); 7 C.F.R. § 15d.3 (2017).

¹¹ 7 C.F.R. § 15d.3 (2017).

¹² Exec. Order No. 13160, 65 FR 39775 (2000).

¹³ 7 C.F.R. § 15d.3 (2017).

¹⁴ 7 C.F.R. § 15d.3 (2017).

¹⁵ Exec. Order 13672, 79 FR 72985 (2014); 7 C.F.R. § 15d.3 (2017).

Harassing conduct is often, but not always, sexual in nature. USDA policy forbids harassment based on gender regardless of whether the offensive conduct is sexual in nature or whether the harassing individual and the individual being harassed are of the same sex. Unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct based on sex (whether or not it is sexual in nature) constitute sexual harassment when:

- a. Submission to such conduct is either an explicit or implicit term or condition of employment; or
 - b. Submission to or rejection of the conduct is used as a basis for making employment decisions; or
 - c. The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, offensive, or hostile environment.
2. Use of derogatory words, phrases, epithets, gestures, pictures, drawings, or cartoons not otherwise protected by the First Amendment's guarantee of the right to freedom of speech and of the right to religious free exercise:
 - a. Targets on race, color, national origin, religion, sex, disability, age, genetic information, sexual orientation, marital status, familial and/or parental status, income derived from a public assistance program, political beliefs, or gender identity, regardless of the means of delivery (that is, verbal or electronic communication); or
 - b. Intimidates, abuses, offends, or creates a hostile work environment.
3. The use of electronic devices or forms of communication (computers, cellular telephones, tablets, internet, email and/or other technological equipment) to harass, demean, or degrade another. This includes the viewing, downloading, storage, or distribution of pornographic or sexually explicit material on the employer's electronic systems whether in the workplace or not, whether on duty or off duty, and whether or not another employee witnesses it.
4. Retaliation against any individual for reporting matters under this policy, or for an individual's involvement in an inquiry related to such a report.

Employees who witness harassment should immediately report it to their manager, supervisor, to another management official in your office or agency, or to your civil rights office. Any individual who believes he or she has been subjected to or witnessed harassment in the workplace is encouraged to inform the alleged harasser directly that the conduct is unwelcome and must stop. Additionally, harassment reports should be made with USDA's Office of the Assistant Secretary for Civil Rights, CR-info@ascr.usda.gov, or (202) 401-0005 (local) or

1-800-795-3272 (outside/toll free), or the individual subcomponent Civil Rights Office where the individual works or believes harassment has occurred. A list of these resources, along with contacts at the Office of Human Resources Management, Office of Inspector General, Office of the General Counsel, Office of Ethics, and individual subcomponent Mission Area Human Resources Offices, are attached to this policy.

Reports of harassment must be addressed in a prompt, impartial, and confidential manner to the extent allowed by law. Only individuals who determine if harassment occurred, or develop recommendations and implement corrective measures, shall be made aware of harassment reports.

Any individual who initiates a harassment complaint or provides information related to a harassment complaint may do so without fear of retaliation before, during, and after the inquiry or investigative process. Appropriate steps will be taken to investigate and remedy any known incidents or reports of harassment within established timeframes by impartial parties. If a record of inquiry supports a finding that harassment has occurred, or that an individual has failed to follow the procedures outlined in this policy, that individual will be subject to the appropriate corrective and/or disciplinary actions, not limited to reprimand, suspension, demotion, or removal.

Individuals who believe they have been subjected to unlawful discrimination, including sexual harassment or reprisal for harassment-related civil rights activity, may also file a complaint of discrimination by contacting an Equal Employment Opportunity (EEO) Counselor at 1-800-787-8821 within 45 calendar days of the alleged incident. Failure to do so may result in dismissal of the EEO complaint for untimeliness. However, expiration of the 45 calendar-day period does not preclude the individual from reporting the incident to an appropriate official to have the incident investigated.

This anti-harassment process is distinct and separate from any rights or obligations in the EEO, Merit Systems Protection Board (MSPB), or internal grievance processes. Reporting harassment is not equivalent to filing an EEO complaint under 29 C.F.R. Part 1614.



Sonny Perdue
Secretary